IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Crl.MC.No. 2063 of 2007()

CMP.4119/2007 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER:

PANCHAMI, D/O. RAVEENDRAN,
RENJITH BHAVANAM, CHUNAKARA NADUVILE MURI,
CHUNAKKARA P.O.

BY ADV. SRI.R.PADMAKUMAR

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2063 OF 2007

Dated this the 3rd day of July, 2007

ORDER

The petitioner is aggrieved by an order passed by the learned Magistrate (copy of which is produced as Annexure-2) under which her prayer for release of a lorry allegedly used for illicit transportation of river sand was dismissed.

2. According to the petitioner, the petitioner is the owner of the vehicle and there is no justification in the insistence of continued retention of the vehicle in the custody of the police/court. The learned Magistrate has overlooked the decision in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638). Subject to appropriate conditions, the vehicle may be ordered to be released to the petitioner, it is prayed.

3. The learned Public Prosecutor does not oppose the

said prayer. The learned Public Prosecutor only submits that appropriate conditions may be imposed.

4. I am satisfied that all courts must avoid the unfortunate consequence of valuable property suffering damage and deterioration in the custody of the courts. Where such loss is avoidable, subject to appropriate stipulations, the vehicle can be released to the person best entitled to possession thereof. I am, in these circumstances, satisfied that this Crl.M.C. can be allowed.

5. In the result:

(a) This Crl.M.C. is allowed.

(a) The vehicle i.e., lorry bearing registration No.KL-4/M 4956 shall be released to the petitioner on the following terms and conditions:

(i) The petitioner shall furnish documents to satisfy the court that she is the owner entitled to possession of the vehicle.

(ii) She shall make a cash security deposit of Rs.25,000/- before the learned Magistrate.

(iii) She shall execute a bond for an amount equal to the value of the vehicle to be determined by the learned Magistrate

with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge